

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Matthew E. Elliott,

Plaintiff,

v.

Case No. 1:23cv780

Bobbie J. Stevens, et al.

Defendants.

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) filed by the Magistrate Judge on January 3, 2024 (Doc. 7).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties may forfeit rights on appeal if they failed to file objections to the R&R in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge’s R&R (Doc. 7) have been filed and the time to do so has expired.

Accordingly, it is **ORDERED** that the R&R (Doc. 7) of the Magistrate Judge is hereby **ADOPTED**. Consistent with the recommendation by the Magistrate Judge, Plaintiff’s Fourteenth Amendment due process claims based on alleged violations of prison policy and plaintiff’s Eighth Amendment claims are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted. 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). Plaintiff’s remaining Fourteenth Amendment claims relating to his disciplinary charges, his disciplinary hearing, his disciplinary convictions, and the effects of his disciplinary convictions are **DISMISSED** as Heck-barred **WITHOUT**

PREJUDICE to refiling should plaintiff show that his disciplinary convictions have been overturned. See *Sampson*, 917 F.3d at 882. As a result, the Plaintiff's Motion for Appointment of Counsel (Doc. 9) is **DISMISSED as MOOT**.

For the foregoing reasons, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this order would not be taken in good faith. See *McGore v. Wigglesworth*, 114 F.3d 601 (6th Cir. 1997), *overruled on other grounds*, *Jones v. Bock*, 549 U.S. 199, 203 (2007).

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court